



Dear Friends,

The issue of “repressed and recovered memories” wends its sluggish way through our culture and legal system, most often in the direction supported by science, but not always. Some recent events demonstrate how very difficult it is to change deeply-held cherished beliefs.

Opportunity lost. The American Psychiatric Association has posted a draft of the proposed *Diagnostic and Statistical Manual—V (DSM-V)* [1] and invites professionals and the public to comment through April 20. (p. 3) A glance at the section on Dissociative Identity Disorder, (originally Multiple Personality Disorder) shows no significant change has been made in spite of the now compelling evidence that the increase in incidence is iatrogenic. It’s disappointing but not surprising. The movement toward science in the area of repressed memories will apparently continue to come from the courts as it has for the past two decades, not from the mental health profession.

The March/April issue of *The Psychotherapy Networker*, available on the web,[2] has a terrific description of the highly political processes involved with the inclusion of a diagnosis in the *DSM*. Mary Sykes Wylie’s article “The Long Shadow of Trauma” is about a proposed new trauma entry championed by Bessel van der Kolk, M.D. Called “Developmental Trauma Disorder” (DTD), the entry has been rejected to date. Wylie quotes the chair of the DSM Trauma Subgroup, Matthew Friedman, M.D.:

“Their research was almost entirely retrospective, collected from different places, under a variety of conditions, using different kinds of measurements. They need to identify in advance, not retrospectively, what the criteria should be, develop the diagnostic instruments to assess them, then go into the field and rigorously apply it to see whether the criteria they propose are accurate, whether they hold together diagnostically and constitute a diagnosis that is sufficiently differentiated from others...”

We wonder if the DID diagnosis truly meets the criteria listed by Friedman.

In the same issue, psychologist Susan Clancy whose new book *The Trauma Myth* is described on page 8 writes:

“The problem is that today, after more than twenty-five years, predictions based on the trauma model have not proved accurate. Characteristics of the sexual abuse experience related to trauma (like how frightening it was, whether penetration or force was involved, and how many times it happened,) do not do a good job of forecasting the level of long-term psychological harm experienced... Most of the scholars in the sexual abuse field are coming to agree that understanding how and why sexual abuse damages victims probably has little to do with the actual abuse and a lot to do with what happens in its aftermath.”

Although understanding the complexity of how abuse may harm individuals may be increasing, our culture’s love affair with the belief that memory of childhood trauma is “repressed” and later recovered is still strong as evidenced in some recent legal decisions.

Although the courts have generally been moving in the direction of determining that there is a lack of a scientific evidence for claims of repressed memories, the Massachusetts Supreme Judicial Court went in another direction. Despite an *amicus curiae* brief signed by one hundred scientists stating the lack of scientific support for the notion of repressed memories, the Court upheld the conviction of Paul Shanley based on the recovered repressed memories of Paul Busa. (p. 10) Even though the issue before the Court was one of science and not the guilt or innocence of the accused, the pervasive climate generated by the ever-growing clergy abuse scandal no doubt played a role. A feeling for that climate can be found in the comments to an Australian television documentary about the Shanley case.

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The next newsletter will be sent in July 2010.

[3] The program featured Elizabeth Loftus, Ph.D., and James Chu, M.D., both of whom were experts in Shanley's trial. A statement by Dr. Chu in this documentary was similar to his testimony and exemplifies the pseudoscience that the Massachusetts Supreme Judicial Court finds credible:

"If you've been repeatedly traumatized, you're actually much more likely to block it out eventually than if it's happened once or twice. So one theory talks about repression, there is some kind of process, itself unconscious, that makes things that are too overwhelming or too conflictual not then available to your conscious memory."

The theory flies in the face of what is known about memory. The more frequently something happens, the more likely it is to be remembered although details of incidents may be blended. [4]

In a similar misdirection, a judge in Indiana ruled that a jury could hear repressed-memory testimony. This is a first for Indiana and as one law professor noted, the decision will likely force the court of appeals and the Indiana Supreme Court to look at the issue.^[5] But the decision is sufficiently worrisome that we contacted Minnesota attorney R. C. Barden, J.D., Ph.D., to ask what he thought might be factors contributing to unscientific legal decisions. (p. 11) Dr. Barden is convinced that the problem lies in the fact that too often individual attorneys with no expertise in science try to defend cases by themselves as in the cases mentioned above. Dr. Barden notes:

"The medical system ended the ineffectual, horse-and-buggy, 'one professional does it all' practice model decades

The idea of repression ultimately hurts victims.

"What therapists in the sexual abuse field refer to as repression is actually simple forgetting. Most children who get abused don't understand it at the time. Thus, it is not a significant experience when it happens—it's weird, perhaps—and so they forget it, like we forget so many aspects of childhood. Later on in life they may be asked by a therapist, "Were you sexually abused as a child?" and this question will cue a memory. When this happens it is not an example of a recovered memory. It is an example of normal forgetting and remembering.

"The idea of repression ultimately hurts victims. It reinforces the notion that sexual abuse is and should be a traumatic experience when it happens—something done against the will of the victims. Since for most victims this is not the case, they end up feeling 'alone,' 'isolated' and 'ashamed.'"

Rogers, T. (2010, January 19). *The Trauma Myth*: The child betrayed. Susan Clancy discusses her controversial theory, and how an industry designed to help children may hurt them. *Salon.com*. Retrieved on 1/19/10 from http://www.salon.com/books/int/2010/01/18/trauma_myth_interview

ago. The legal system also needs to wake up to the need for multi-disciplinary practice. JD-only attorneys should never, ever be permitted to litigate 'repressed and recovered memory' cases without the supervision and assistance of specialized legal experts."

That admonishment provides a key to looking at repressed-memory cases. For example, what psychological expertise will the defense attorneys for the members of the Mohler family in Missouri bring to the table? Several men in that family have been accused of past abuse based on recovered memories. On page 3, a reader from Kansas City adds more information about that case that was mentioned in the Winter Newsletter.

Recovered-memory nonsense still abounds but a new generation of "recovered-memory myth-busters" is on the scene to deal with it. Students of Richard McNally such as Susan Clancy and of Elizabeth Loftus and members of the FMSF Scientific Advisory Board push the boundaries of recovered-memory reason forward. (See box on this page.)

A new generation of "myth-busting" investigative reporters is also on the job. For example, Doug Mesner has been attending meetings of people who claim to have been abused by satanic ritual abuse cults and he then writes about the meetings and the claims on his blog. Doug has interviewed many retractors, listened to their stories and followed up by investigating the therapists who helped them believe in what never happened. Most recently he has brought to the fore some of the untenable claims of Colin Ross, M.D. (See <http://www.process.org/>)

Although we wish that the recovered-memory phenomenon would move more quickly on its way out of our culture, there is no doubt that fascination with the story elements still propels belief in the recovered-memory phenomenon, science notwithstanding.

Pamela

1. Go to: <http://www.dsm5.org/Pages/Default.aspx>
2. Wylie, M.S. (2010, March/April). The long shadow of trauma. *Psychotherapy Networker*. Available at: <http://www.psychotherapynet-worker.org/magazine/currentissue>
3. (2010, March 18). False memories. Catalyst, (Australia) ABC TV Science. Retrieved on 3/19/10 from <http://www.abc.net.au/catalyst/stories/2848614.htm>.
4. There are many studies in support. For example: McNichol, S., Shute, R. & Tucker, A (1999). Children's eyewitness memory for a repeated event. *Child Abuse & Neglect*, 23(11), 1127-1139. "Children who experience repeated events have increased recall for repeated details but confuse the timing of details which change across events. The findings support previous suggestions that (a) it is unrealistic to expect children to be able to report repeated events without some confusion about timing of details and (b) children are resistant to misleading questions about abuse."
5. *John Doe76C vs. Archdiocese of St. Paul and Minneapolis*. No 62-C9-06-003962. Minn. 2nd Judicial District. Dec 8, 2009.



Public Invited to Comment on Draft of DSM-V

The public has until April 20, 2010 to comment on proposed changes to the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* that is published by the American Psychiatric Association. This book is the arbiter of what is normal and what is not — helping practitioners, guiding the courts, determining insurance reimbursements. The final version of the *DSM* is expected to be released in 2013. If you wish to submit comments, go to <http://www.dsm5.org/Pages/Default.aspx>

For *FMSF Newsletter* readers the proposed changes will likely seem disappointing. Any hope that scientific clarity would shine in the sections of the manual that previously provided support for belief in repression and recovery of memories must be abandoned. Disappointment in the proposed manual extends far beyond FMSF concerns. In addition to a lack of any conceptual change that might have moved the field forward, critics have expressed concern that the changes instead will only increase the number of people who may be classified mentally ill. Edward Shorter,^[1] Professor of the History of Medicine and Psychiatry at the University of Toronto writes:

"The latest draft of the *DSM* fixes none of the problems with the previous *DSM* series, and even creates some new ones."

"To flip through the latest draft of the American Psychiatric Association's Diagnostic and Statistical Manual, in the works for seven years now, is to see the discipline's floundering writ large. Psychiatry seems to have lost its way in a forest of poorly verified diagnoses and ineffectual medications. Patients who seek psychiatric help today for mood disorders stand a good chance of being diagnosed with a disease that doesn't exist and treated with a medication little more effective than a

placebo."

"With the *DSM-V*, American psychiatry is headed in exactly the opposite direction: defining ever widening circles of the population as mentally ill with vague and undifferentiated diagnoses and treating them with powerful drugs."

Psychiatrist and author Sally Satel, M.D.^[2] has similar concerns:

"The problem is that the changes don't really advance psychiatry."

"[A] number of changes proposed for the *DSM-V* are likely to inadvertently place large swaths of normal human variation under the umbrella of pathology."

Ohio neuropsychiatrist John Sorboro, M.D.^[3] writes:

"The *DSM-V* will officially sanction suffering and dysfunction like never before..."

Stephen Murgatroud, M.D.,^[4] reminds us that the *DSM* is not a "scientific" document and that the classifications are fluid.

"The *DSM* itself is problematic. Diagnoses like "homosexuality," once classified as an illness, come and go depending on societal pressures. By no stretch of the imagination is it a scientific, evidence-based document."

Allen Frances, M.D., who headed the *DSM-IV* and others "question the entire *DSM-V* enterprise, arguing that a major revision should have been put off until there are more hard data on biological causes of mental disorders."^[5]

We suspect that many *FMSF* readers will have strong opinions and that they will share them with the editors.

1. Shorter, E. (2010, February 27, 2010). Why psychiatry needs therapy. *Wall Street Journal*. Retrieved on 3/1/10 from <http://online.wsj.com/article/SB10001424052748704188104575083700227601116.html>
2. Satel, S. (2010, February 19). Prescriptions for psychiatric trouble. *Wall Street Journal*, W13.
3. Sorboro, J. (2010). Prognosis negative: Psychiatry and the foibles of the *Diagnostic and Statistical Manual V (DSM-V)*. *Skeptic Magazine* 15(3), 44-49
4. Murgatroyd, S. (2010, February 21). Is practicing psychiatry a disorder in need of treatment? Troy Media. Retrieved on February 22, 2010 from <http://www.troymedia.com/?p=8409>
5. Miller, G. & Holden, C. (2010, February 12). Proposed revisions to psychiatry's canon unveiled. *Science*, 327, 770-771.



Rush to Judgment

A Skeptic in Kansas City

(This article adds to the information about the Mohler case that appeared in the Winter FMSF 2010 Newsletter.)

"[For law enforcement officers] the level of proof necessary for taking action on allegations of criminal acts must be more than simply the victim alleged it and it is possible.... We need to be concerned about the distribution and publication of unsubstantiated allegations of bizarre sexual abuse."- Kenneth Lanning, FBI

Dressed in orange jumpsuits and shackled at their wrists, ankles, and waists, six members of the Mohler family shuffle past local television news cameras and into a courtroom. Tethered together, they resemble fish on a stringer with the proud authorities displaying their catch. On-the-spot reporters read the charges against them, "Forcible rape of a child; Deviate sexual assault; Use of a child in a sexual performance." Newspaper accounts are perhaps even more harsh: the men's booking photos are posted beneath headlines such as "Incest Allegations Shatter Public Image of Church-Going Clan,"^[1] or "Child-Raping Missouri Family May Have Bodies in Yard."^[2] Posted on the internet beneath these stories are reader comments reminiscent of 1692: judgments of guilt and cries for harsh punishment along with suspicions cast upon any who question the charges dominate the boards.

The men are 76-year-old Burrell Mohler Sr., his four sons, Burrell "Ed" Jr., David, Jared, and Roland, and Burrell Sr.'s 72-year-old brother, Darryl Mohler. The arrests were made in November 2009, by Lafayette

County, Missouri authorities based on accusations of ritualistic crimes against Ed Mohler's (now adult) children from 1988 to 1995. The charges against the men involve numerous alleged child rapes, sodomy, and bestiality. They are also publicly accused of kidnapping, murders, producing child pornography, breeding then slaughtering babies, performing forced abortions on minors, and holding an unwilling sex-slave for years in the family basement (but there have been no charges filed for those allegations).

"A hallucination is a fact, not an error; what is erroneous is a judgment based upon it." – Bertrand Russell

The case against the Mohler men first came to Lafayette County authorities in August 2009, when Ed Mohler's 26 year old daughter T.A. contacted a western Missouri detective. According to the probable cause statements: T.A. had "suppressed many of the memories" until recently. She "identified 8 specific memories of abuse and a 9th that was perpetrated on her brother... She has many memories of abuse," but some occurred in other jurisdictions. "She became pregnant and was made to have an abortion at age 11. She doesn't remember any sexual abuse after that date."^[3]

Even if the word "suppressed" had not been used, the pointed use of the word "memories" in the report is indicative of repressed memory accusations. Generally when people report past events they do not do so under the context of "identifying memories".

After those initial accusations in August, authorities made contact with, and began to question the other five siblings. On October 7th, three of the siblings T.A., A.J., and E.M. provided authorities with a 36-page collaborative report detailing several murders they witnessed spanning two Missouri counties. They were able to lead authorities to an approximate spot they say they helped to bury one of the murder victims. On October 29th, T.A.

again spoke with the detective, this time alleging that she recalled her grandfather keeping a female child in his basement crawlspace. The siblings also told authorities that as they were being abused, the men told them to write down what was happening to them. These notes were placed in mason jars then buried. The siblings say their abusers told them that if they buried these notes, their memories would also become buried.^[4]^[5]

A fourth sibling (E.B.) told police that he had once unearthed some of those jars as a child, but reburied them at the request of his sisters.^[4] Based on these statements, a search warrant was issued for the farm previously owned by Burrell Mohler Sr. to search for bodies, other evidence of murder, items from the crawlspace, and the mason jars.^[6]

On November 10, 2009, as authorities swarmed the Bate City farmhouse with backhoes and shovels, detectives from Lafayette and various other counties were dispatched to arrest Burrell Sr. and his sons.

"A lie gets halfway around the world before the truth has a chance to get its pants on." – Winston Churchill

As the arrests were made public, lead investigator Sheriff Kerrick Alumbaugh held a press conference. The stated purpose for the conference was to urge other possible victims to come forward. Specifically, investigators wished to locate the girl said to have been held captive in the basement crawlspace.

There were, however, other remarks of interest made during that press conference. One comment in particular gives further reason to suspect that all of the accusers are engaged in the recovering of repressed memories:

Q: *"How does the time factor complicate the case?"*

A: *"Time factor always complicates a case. But when memories of this come out with the victims, as you talk*

about it, as you investigate it, more comes out."^[7]

Alumbaugh also defended the large amounts of county resources used to investigate the case, insisting the expenditures are important for protecting children: *"You can read the probable cause statements as we leave and understand that this is money well spent of the tax payer's dollars to bring these people to justice...They've had a threat to cut investigators...So, I mean, these are things that are really impacting our budgets and are very worthwhile to do because of the children."*^[7]

Possibly most important, were the personal motivations Sheriff Alumbaugh expressed:

"You personally attach it to yourself. You have children at home. You think about your children, you think about children that you know. Our biggest concern right now are those victims and those children that are out there that are potential victims. So, each one of us takes this very personally."^[7]

"All wrong-doing is done in the sincere belief that it is the best thing to do" – Arnold Bennet

Could Sheriff Alumbaugh have been influenced by the rape of a 5-year-old girl in a 2006 case he was involved with which happened because the man's arrest for another crime had been delayed? By aggressively pursuing the Mohler men, could he begin to repair his part in that child's tragedy?

In that 2006 case, the nude, battered body of 41-year-old Marsha Spicer was found in a shallow grave in Lafayette County. Lorie Dunfield, a friend of Spicer's, reported to authorities that she believed Spicer may have been involved with a man named Richard Davis. Dunfield reported that Richard Davis had recently asked her to assist him in videotaping the torture and murder of other women during three-way sex. *"He wanted me to help him kill women and get rid of the bodies."* Dunfield said.^[8] Lorie Dunfield

managed to get away from Davis, but believed that her friend, Marsh Spicer, may have later hooked up with him. Sheriff Alumbaugh and his deputies were called to interview Richard Davis and his girlfriend Dena Riley in regard to the Spicer homicide.

Richard Davis was already being sought by his parole officer after serving 16 years for raping and sodomizing a woman at knife point. His parole officer had been unable to contact him for a drug screening. Upon arriving at Davis's apartment, investigators noted a video camera trained on the bed, an open journal with notations about choking and sex, and marijuana on a table. During that initial interview, Davis's girlfriend Dena Riley admitted that Davis was into violent sex.

Rather than detain Davis, Sheriff Alumbaugh told Richard Davis and Dena Riley to leave the premises while he applied for a search warrant. Alumbaugh and his deputies returned hours later. The investigators viewed the tape currently in the VCR next to Davis' bed. It was a "snuff video" of the rape, beating, and strangulation of Marsha Spicer. It appeared that the couple may have been watching the video just prior to the Sheriff and deputies' arrival. Regrettably, since Alumbaugh had not detained Davis and Riley, they had fled the city. It was eight days before a nationwide man-hunt managed to locate the couple for arrest. During this time, Richard Davis kidnapped and raped a 5 year old girl. The child's injuries were so severe that she had to be airlifted to a hospital.

Police Chief Fred Mills defended Alumbaugh's decision, "You can spin the facts any way you want. But we had no probable cause to arrest them. What you need for an arrest warrant is a lot more than you need for a search warrant." Alumbaugh said, "We just didn't have enough (evidence). We weren't ready to do hard questioning on them."

None-the-less, Alumbaugh arrested the six Mohler men with only accusations from the alleged victims. These men had no parole violations, no drugs on their nightstands, and no past convictions for violent rapes. In fact they had no criminal histories at all. There were no bodies recently discovered in shallow graves, neither were the men holed up in shabby apartments with meth-addicted girlfriends. The Mohler men were arrested while at home with their wives or working for their long-time employers, to be charged with crimes allegedly occurring decades ago.

Newly appointed prosecutor, Kellie Ritchie filed the charges. It was while working as assistant DA in Buchanan County that Ritchie began concentrating on sexual-assault cases. Four years out of law school, Ritchie was ready for greater responsibility at the same time that her boss wished to have one prosecutor handle all sexual-abuse cases.^[9] Ritchie readily accepted that challenge and helped to open a children's advocacy center. Since her February, 2009 appointment to the Lafayette County office, Ritchie has continued her dedication to assisting victims of rape, raising awareness through a county Denim Day,^[10] and promising the vigorous prosecution of any in possession of child pornography.^[11] It seems more probable that this focus could have clouded the prosecutor's judgment in filing charges based on dubious repressed memory accusations?

"An error does not become truth by reason of multiplied propagation" – Mahatma Gandhi

The Behavioral Science Unit of the FIB has assisted in investigations of hundreds of cases in which adults begin to report that they were victims of extreme abuses as children. Allegations involve multiple victims and multiple offenders and often include insertion of foreign objects,

witnessing mutilations, as well as sexual acts and murders being filmed or photographed. In several of these cases, women claim to have had babies that were turned over for human sacrifice. Such accusations are most common in rural or suburban communities with high concentrations of religiously conservative people. According to Behavioral Science Unit Supervisory Agent Kenneth Lanning:

"In none of the multidimensional child sex ring cases of which I am aware have bodies of the murder victims been found - in spite of major excavations where the abuse victims claim the bodies were located. Not only are no bodies found, but also, more importantly, there is no physical evidence that a murder took place. Many of those not in law enforcement do not understand that, while it is possible to get rid of a body, it is even more difficult to get rid of the physical evidence that a murder took place." – Kenneth Lanning, FBI^[12]

In 1994, the US Government funded a study by The National Center on Child Abuse and Neglect. Researchers found more than 12,000 accusations of group cult sexual abuse, but none were able to be substantiated. The principle investigator in that study, Dr. Gail Goodman, commented:

"While you would not expect to find corroborating evidence in many sexual abuse cases, you would expect it when people claim the rituals involved murders, and the reported cases come from district attorneys or police...If there is anyone out there with solid evidence... we would like to know about it." [13] [14]

Large scale government funded investigations were also conducted in the states of Michigan, Utah, and Virginia with the same empty-handed results.

If Lafayette County officials were familiar with any of these reports, they should not have been surprised to find only one broken jar (no note), a bone fragment (unknown type), some bro-

ken eyeglasses, half a credit card, and a shoe sole in their excavation of the Bates City farm.^[15]

"It ain't what you don't know that gets you into trouble. It's what you know for sure that just ain't so." – Mark Twain

The Sheriff's press conference proved more fruitful than the farm excavation. The following day, a woman came forward claiming to have been held in the basement's crawlspace for several years as a child. *"She recalls becoming pregnant twice while in captivity. Burrell Sr. and Ed Burrell, Jr. put the first infant in a box and buried it in the dirt floor under the window. Days later, the floor was covered in concrete."*^[16] Ground penetrating radar was used to locate a "box-like" area under the concrete and a new search warrant issued. Detectives returned to the farmhouse, broke open the concrete floor, but found only dirt. Samples of the dirt were removed for analysis.^[17] Announcements of basement sex-slave and her murdered infant made for more sensational headlines, although no charges were ever filed in regard to her. Three weeks later, Sheriff Alumbaugh said that the woman *"is no longer part of this investigation."*^[18] This proclamation has not been widely reported.

In addition to the basement captive, a local man whose ex-wife, Pamela, had once been married to Ed Mohler came forward following the press conference. Mark Young and Pamela Young divorced in 1993 with Pamela gaining custody of their son. Pamela then married Ed Mohler in 1999. Mr. Young was interviewed on several television news programs, as well as with print media, claiming that Ed's ex-wife (mother of the accusers), Jeanette Mohler (Cyr) had come to him in January 2000 alleging that Ed was abusing Mark and Pamela's son. Mr. Young says that he then filed complaints and won custody of the boy in an emergency hearing. Public records

show, however, that Mark Young did not file for custody of his son until 2002.^[19] His ex-wife had already divorced Ed Mohler nearly a year prior, in the Spring of 2001.^[20]

The siblings' mother, Jeanette Mohler, told investigators that she knew about, or suspected the abuse at the time it was happening. "At the time, complaints by the mother were taken to the head of the church rather than law enforcement."^[21] Bishop Tonga, now retired, recalls Jeanette's complaints to him. Tonga says he interviewed both Ed and the siblings and they all denied the mother's accusations. No further action was taken by the mother or by Mr. Tonga. Only Ed, Jeanette, and their children were members of Mr. Tonga's congregation. No complaints were taken to any member of the other men's churches.

The statements made by Jeanette Mohler are puzzling. Just as the original accusations have expanded to include bestiality, kidnappings, and murders, they have also expanded in time, now encompassing twelve years, from 1983 to 1995. Jeanette remained married to Ed throughout this time, not filing for divorce until 1997. During their divorce, both Ed and Jeanette continued to attend the Independence Missouri Mormon Church. It is more probable that it was during this period that the mother began leveling these complaints against her husband to her church and possibly to her six children.

"There are people so prone to exaggeration that they can't tell the truth without lying". - Josh Billings

Defendant Burrell Mohler Sr. has been the most maligned in the media due to the finding of "incest pornography" at his home. On the day of his arrest, his wife, Sandra Mohler, voluntarily allowed investigators into all common areas of the house. (Some areas were excluded as they are private quarters for an unrelated boarder). According to the investigator's affi-

davit, Mrs. Mohler explained to Jackson County Detective Cathy Covey that she and her husband had arranged for separate bedrooms "after she had discovered he was viewing magazines and videos depicting persons involved in sexual activity."^[21] (This statement has been consistently misquoted in the press.) Mrs. Mohler reported that although they had begun to sleep separately, both had full access to all areas of the residence. She indicated that her husband commonly used the computer in her room because he had never set-up internet access for the computer in his basement bedroom.

Mrs. Mohler also *"had full permission to enter his sleeping area downstairs"*.^[22] She stated that on two occasions she had looked in hidden areas of her husband's bedroom to find his pornography. She told Detective Covey that she had taken away the magazines she found most objectionable and locked them in her file cabinet. Mrs. Mohler voluntarily supplied the investigators with the key to that filing cabinet. The magazines she had locked away included five digest style magazines which showed photos of adult models, engaged in sexual activity, with narratives depicting incestuous relationships.^[22] *"Incest is, in fact, sexual relations between individuals of any age too closely related to marry. It need not necessarily involve an adult and a child."*^[22] Those five magazines are the most widely reported finding to imply the guilt of all six men, although none of them involve children or even models who appear to be children. The primary stash of pornography, later found in Burrell Sr.'s sleeping quarters, consisted of at least 65 more magazines, movies, and books – none of which were incest related.^[23] In fact, many of these were specifically about and for senior citizens. One DVD has the words "Grandma and Grandpa" in the title and has been falsely reported as "incest porn" when in fact it is about sexuality between aging part-

ners.

Many observers have noted that the search inventories included many unmarked or hand labeled videos. It is been speculated that those tapes may contain child pornography but the information has not been released to the public. In fact, some articles on the case have falsely reported that illegal pornography was seized. Possession of child porn in the state of Missouri carries a maximum 10-year sentence. None of the men have been charged with this or any other offense resulting from the searches. Despite the wide assortment of accusations, the men are charged only with the crimes in which no physical evidence would necessarily be expected.

“They were distinguished for ignorance for they had just one idea and that was wrong.” - Benjamin Disraeli

When asked where the accusing Mohler siblings reside, Sheriff Alumbaugh states that they are “from all over right now.”^[7] While this is true, the primary accuser resides in the college town of Provo, Utah and two other siblings show previous addresses in Provo. Provo, Utah is home to the Brigham Young University run by the Mormon Church. For a city of only 42 square miles, it has seen more than its share of repressed memory scandals.^[24]

The student Counseling Center at BYU offers therapy to students for abuse issues. The Center’s website asserts, “Some individuals have little or no memory of being sexually abused and its impact upon them until adulthood.”^[25] The Center also recommends books by repressed-memory therapists, Lynn Finney, Beverly Engel, and Noemi Mattis, as suggested reading. In 1993, psychologist Carol Tavris commented on books such as these:

“The authors of these books all rely on the one another’s work as supporting evidence for their work; they all endorse and recommend one another’s books to their readers. If one of them

comes up with a concocted statistic — such as “more than half of all women are victims of childhood sexual trauma” — the numbers are traded like baseball cards, reprinted in every book and eventually enshrined as fact. Thus the cycle of misinformation, faulty statistics and invalidated assertions maintains itself....”-Tavris, C. (1993, January 3). Beware the incest machine. *New York Times Book Review*, 1.

Lynn Finney is known for her promotion of self-hypnosis to recover memories of abuse, and for her belief that fully one-third of all women have been victims. In fact, Finney’s one-third statistic leads BYU Counseling Center’s website page for students seeking therapy.^[25] One of Finney’s former patients, Martha Beck, authored the 2005 book *Leaving the Saints*. Beck is a Provo native, a therapist, and past professor of Sociology at BYU. It was while teaching at BYU, that Beck recovered memories of ritual abuse. In her book, Beck brags of her cruel confrontation with her 90 year old ailing father, “I grin, but my father is not amused. He looks longingly toward the hotel room door, apparently realizing I’m not about to let him leave.”^[26] All seven of Beck’s siblings have expressed outrage and condemned these allegations.^[27]

Beverly Engel espouses, “If you still have a hard time believing a survivor...look at your own history for signs that you yourself may have been abused and are in denial.” Engel gives a list of symptoms to assist the reader in determining if they have been abused and are in denial. Those symptoms include: feeling ugly; a tendency to apologize; feeling helpless; or problems in relationships.^[28]

Also recommended by the BYU Counseling Center is the 1993 publication *Confronting Abuse*.^{[25][29]} Compiled by three Brigham Young University professors, *Confronting Abuse* is a collection of essays on ritual and sexual abuse. In it, repressed-

memory practitioner, Neomi Mattis, describes the abuse she’s helped her patients to uncover:

“In addition to all combinations of sexual intercourse genital, anal, and oral between child and adult or child and child (forced), victims are penetrated genetically or rectally with all kinds of objects, and are forced to submit to sexual activity with animals.”

“They are forced to participate in all of the crimes, including sacrifice of animals; the torture and sometimes murder of babies, including in some cases the infants of young girls required to bear children specifically for sacrifice; the torture and sometimes murder of adults; and the systematic disposal of bodies.”

Mattis explains why evidence of these crimes is never found, despite in-depth investigations:

“Cultists include professionals, such as morticians and butchers, who are skilled at disposing of evidence.”

She goes on to explain why many of the reports are verifiably false,

“The victims are programmed to dissociate, so that they do not recognize or remember parts of their own experience or personality. They are trained to deny accusations, tell conflicting stories and retract their own reports.”

As for the seemingly normal, often charitable, outward lives of the accused in these child-rapes, murders, and torture, Mattis offers this, “[The Perpetrators are also] dissociative and thus unaware of their other cult-involved selves.” * By this logic, any one of us could be not only victims, but also perpetrators of these crimes and never know it.

Just eight miles outside of Provo, the infamous “Greenbaum”^[31] lectur-

*This study found that in cases of alleged abuse with no claims of repression or amnesia by the accusers, only 22% of accused passed polygraphs. In cases where accusers claimed a period of amnesia, 91% of accused passed polygraphs.^[30]

er, Corydon Hammond operates a therapy office. In 2004, Hammond, along with Bennett Braun and Roberta Sachs of Chicago, settled a malpractice lawsuit against them by retracting repressed-memory patient Elizabeth Gale. In the \$7.5 million settlement, Hammond's portion was \$175,000.

Two things are infinite: the universe and human stupidity; and I'm not sure about the universe. – attributed to Albert Einstein

It seems to be the perfect storm: A divorce with bitter custodial parent; the repressed-memory pied pipers of Provo; a lead investigator with an agenda; a newly appointed prosecutor who has specialized in sexual abuse cases; and regular sensationalist misinformation distributed in the media. Having made the allegations so public and over-extending county monies on the investigation, the likelihood that the charges will be dropped due to the lack of evidence is greatly lessened.

An entire generation has come up since the hysteria of the 1980's and early 1990's. We saw then how easily the hysteria spreads from one sibling to the next, to investigators, prosecutors, child services, the media, and to the public. Each points to the other as evidence that their beliefs are reasonable. At that time, it was daytime talk shows like Sally Jesse Raphael or Phil Donahue that disseminated these shocking tales to gullible audiences. Today, the internet has taken the place of those talk shows and it seems that audiences are just as gullible.

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New Books: The Good and . . .

*The Trauma Myth:
The Truth About the Sexual Abuse of
Children and Its Aftermath*
Susan A. Clancy
2010 Basic Books

The Trauma Myth is sure to anger many readers because it challenges a treasured belief of our society: child sexual abuse is necessarily traumatic. Psychologist Susan Clancy states at the beginning of *The Trauma Myth* that child sexual abuse is prevalent and that it is clearly damaging to victims; there is no argument there. She argues, however, on the basis of compelling empirical evidence, that the causes of the problems may be highly complex rather than a consequence of "trauma."

The author notes that for decades the cultural and therapeutic assumption has been that all child sexual abuse is traumatic for the victims. As a result of ten years of interviewing more than two hundred people about their past sexual abuse and of analyzing the research literature, Clancy found that for most children sexual abuse may be uncomfortable and confusing, but it is not necessarily terrifying (traumatic). As adults, many of these people often redefine the experience and then feel shame and guilt because they believe that at the time they must have consented to the abuse since it happened yet was not traumat-

ic for them. The trauma model of sexual abuse not only does not help these people, it makes matters worse for them.

In a very readable style, Clancy describes the history of the trauma

Excerpt from an Interview with Susan Clancy

Question: Your previous book [*Abducted*] was a takedown of recovered memory. [*The Trauma Myth*] also takes a very negative view of recovered memory. Why are you so opposed to the idea of recovered memory?

Clancy: Because it doesn't exist. There is not one single research study showing that people exposed to horrifying, overwhelming, painful events "repress them" and recover them later on....What therapists in the sexual abuse field refer to as repression is actually simple forgetting. Most children who get abused don't understand it at the time. Thus, it is not a significant experience when it happens—it's weird, perhaps—and so they forget it, like we forget so many aspects of childhood. Later on in life they may be asked by a therapist, "Were you sexually abused as a child?" and this question will cue a memory. When this happens it is not an example of a recovered memory. It is an example of normal forgetting and remembering.

The idea of repression ultimately hurts victims. It reinforces the notion that sexual abuse is and should be a traumatic experience when it happens—something done against the will of the victims. Since for most victims this is not the case, they end up feeling "alone," "isolated" and "ashamed."

Rogers, T. (2010, January 19). *The Trauma Myth*: The child betrayed. Susan Clancy discusses her controversial theory, and how an industry designed to help children may hurt them. *Salon.com*. Retrieved on 1/19/10 from http://www.salon.com/books/int/2010/01/18/trauma_myth_interview

model for sexual abuse and the politics that have embedded in into our culture. She shows how the model both harms and silences most victims of abuse and especially how it ignores what science has shown. She argues that victims of child abuse will be better served if therapists pay attention to what the research shows and move beyond the trauma model for treatment.

The Trauma Myth should be of interest to all and especially to those who have a personal or professional interest in child sexual abuse.

Loftus, E. & Frenda, S.J. (2010, March 12). Bad theories can harm victims. *Science Vol. 327*, 1329-1330.

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* * *

From Birth to Rebirth: Gnostic Healing for the 21st Century

C.V. Tramont
2009 Swan-Raven & Co.

A description^[1] of *From Birth to Rebirth* on the publisher's website says that the book::

"is the heart-warming true story of a dedicated obstetrician whose interest in hypnosis develops into a passion for using past-life regression as an exciting healing modality. After making his way through the rigors of medical training and the trenches of daily practice, Dr. Tramont now finds himself evolving into a pragmatic Gnostic."

The description is accurate but does not begin to capture the degree to which the author believes the stories that his patients weave. There is no dispute that research has shown that hypnosis can be beneficial in some medical situations. There is absolutely *no* empirical evidence, however, that age regression enables a person to access the past or to think like a child. Tramont seems unaware that in his use of hypnosis and past life regressions, he is facilitating the creation of elabo-

rate *fantasies* by his patients.

Although books promoting age regression seem to appear on a regular basis, Tramont rises above the crowd with his chapter on "Future-Life Progression" The author believes that his patients can also see the future. He lists some of their predictions—predictions for more than 50 to thousands of years in the future. Predictions can be verified. Fortunes could be made if his patients made accurate predictions. Unfortunately, nothing is presented that could be tested anytime in the reasonable future.

It is challenging to consider why the myth of age regression holds such appeal, especially given the potential for devastating harm that can result as it did with the recovered memory movement.

1. Retrieved on 3/22/10 from <http://www.granitepublishing.us/dox/B2R/B2R.info.html>.

Sadly, stories of ritual abuse live on despite the fact that neither the FBI nor the police have ever been able to uncover physical evidence of such.

Ritual Abuse: Excerpt From Wisconsin Coalition Against Sexual Assault Website

<http://www.wcasa.org/info/factsheets/ritual.htm>

"Ritual/satanic/sadistic abuse survivors have often been disbelieved due to the extreme and bizarre nature of these types of abuse, and the secrecy that surrounds it. However, it is important to remember that ritual/satanic/sadistic abuse does happen. The more our society denies its existence, the greater the vulnerability of potential victims. Although there are still few studies that document ritual/satanic/sadistic abuse, more survivors are speaking out, and service providers are documenting the number of clients with such histories. Assessment of the prevalence rates of this type of abuse is further complicated by difficulty in tracking the groups who commit this type of abuse. Also, due to the severity of the abuse, many survivors repress the memories for many years—or may never remember. ..."

Massachusetts Supreme Judicial Court Upholds the Conviction of Paul Shanley^[1]

Commonwealth of Massachusetts v. Paul Shanley,
Supreme Judicial Court, Middlesex County, No. SJC-10382

On January 15, 2010, the Massachusetts Supreme Judicial Court issued a decision that affirmed the 2005 guilty judgment of defrocked Roman Catholic priest Paul Shanley for sexually abusing Boston fireman Paul Busa when he was a young child. The evidence presented in the trial were Busa's recovered repressed-memories. During the trial, prosecutor Martha Coakley told the jury that they should believe Busa because he suffered "dissociative amnesia" caused by the emotional trauma.

After the trial decision, Cambridge appellate attorney Robert F. Shaw, Jr., petitioned the Supreme Judicial Court to consider Shanley's appeal for a new trial. Among the issues raised by Shaw was the argument that in the trial, prosecutors failed to demonstrate that "repressed-memory" evidence is admissible and that Shanley's trial lawyer inadequately challenged "repressed-memory" evidence.^[2]

In support of the Shanley appeal, one hundred scientists signed an *amicus brief*^[3] that stated

"'Repressed-recovered memories', 'dissociative amnesia' and related concepts are best described as pernicious psychiatric folklore devoid of convincing scientific evidence. Such theories are quite incapable of reliably assisting the legal process. In our collective opinion, these unsupported, controversial notions have caused incalculable harm to the fields of psychology and psychiatry, damaged tens of thousands of families, severely harmed the credibility of mental health professionals, and misled the legislative, civil, criminal, and family legal systems into many miscarriages of justice."

The Supreme Judicial Court decision was unanimous. Justice Robert Cordy wrote:

"In sum, the judge's finding that the lack of scientific testing did not make unreliable the theory that an individual may experience dissociative amnesia was supported in the record, not only by expert testimony but by a wide collection of clinical observations and a survey of academic literature."

A footnote in the decision may leave the Supreme Judicial Court a big door out of the repressed-memory pit. Cody seemed to say that in the future the Court might toss a conviction if the only evidence is based on recovered-memories. Cordy wrote in a footnote:

"We do not consider whether there could be circumstances

"Future reviewers will cringe at this science-illiterate opinion."

R. C. Barden

where testimony based on the repressed or recovered memory of a victim, standing alone, would not be sufficient as a matter of law to support a conviction."

Attorney Shaw has filed a Petition for Rehearing pointing out, among other issues, that the Court offered no analysis of all the materials presented in the appeal, none of which were available to the trial court.

1. The slip opinion can be found at:

<http://www.socialaw.com/slip.htm?cid=19624&sid=120>.

2. See *FMSF Newsletter*, 18 (2) for background. Another issue raised was ineffective counsel. Shanley's trial lawyer Frank Mondano was also the lawyer who represented grandparents Shirley and Ray Souza.

3. Barden, R. C. (2009, August). Brief of Amicus Curiae of the International Committee of Social, Psychiatric, Psychological, Cognitive Science, Neuroscience, and Neurological Scientists submitted in Commonwealth of Massachusetts v. Paul R. Shanley, No. SJC-10382, Supreme Judicial Court, Middlesex Ct. Massachusetts.

4. Ellement, J.R. & Saltzman, J. (2010, January 15). Defrocked priest Shanley is a victim of "injustice," his attorney says. *Boston Globe*. Retrieved on 1/17/10 from http://www.boston.com/news/local/breaking_news/2010/01/sjc_rules_in_sh.html.



Indiana Judge Rules that Jurors May Hear Repressed-Memory Testimony^[1] John Doe RG vs Archdiocese of Indianapolis

In January, Marion Superior Court Judge David Dryer ruled that the jury in a clergy sex-abuse trial could hear repressed-memory testimony. This may be the first time that an Indiana jury has been allowed to hear evidence about repressed-memory, although previously judges have heard repressed-memory testimony in statute of limitations cases.

The facts of the case were not contested. There are 13 lawsuits filed against former priest Harry Monore who has confessed that he abused at least five of the people who have brought suits. John Doe RG's suit, however, is the only one that involved repressed memories. Only two other cases are currently moving toward trial because the statute of limitations had expired in the cases. The repressed-memory case is expected to be the most contested of the three, and both sides have lined up memory experts.

According to Henry Harlson, professor at the Indiana University School of Law: "Ultimately, this is going to force the court of appeals and the Indiana Supreme Court to make a determination on the use of repressed memory in cases of this nature." ^[2]

Attorney for John Doe RG is Patrick Noaker of Jeff Anderson and Associates in Saint Paul, Minnesota.

John S. (Jay) Mercer of Indianapolis, Indiana represents the Archdiocese

1. See *FMSF Newsletter*, 18 (4) 2009.

2. King, R. (2010, January 22). Ruling in priest sex abuse case may set precedent. *Indianapolis Star*. Retrieved on 1/25/10 from <http://www.indy.com/posts/ruling-in-priest-sex-abuse-case-may-set-precedent>



A Conversation With R. Christopher Barden, Ph.D., J.D.

Note: Dr. Barden's comments are for educational purposes only and do not constitute legal advice of any kind to anyone.

FMSF Newsletter Editor: How did you get involved in the memory wars of the 1990s?

Barden: During my Ph.D. psychology graduate training at Minnesota, UC Berkeley, and the Palo Alto VA/Stanford Medical Centers I became increasingly interested in how people of all ages successfully cope with complex stress. Two national research awards gave me time to explore a wide range of interests. While working in hospitals with multidisciplinary surgical teams, I became interested in improving national standards of medical care for children. Legal and legislative processes were clearly the most powerful and effective way to implement broad systemic changes so I attended Harvard Law School. While in law school, with colleagues in medicine, economics, and law we drafted and later published multidisciplinary legislation to reform U.S. Emergency Medical Care and Injury Prevention Systems for Children (See, *Harvard Journal on Legislation*, 1993). This legislation became nationally known and its key goals have been enacted in some form in many states. I then returned to my home town of Minneapolis and was practicing corporate and health care law while preparing additional multidisciplinary legislative reform efforts. Litigating complex science intensive malpractice cases under the intense glare of the national media was something I had never even considered.

During that time period (1992-1994) I began to receive calls from former science and medical school colleagues concerned about a very dangerous "treatment" approach called recovered-memory therapy. "Now that you are a lawyer can't you do something to

stop this quackery that is destroying thousands of families?", they would ask. As I investigated these cases, the national experts in litigation told me winning financially viable lawsuits was "impossible" because psychotherapy lacked clear standards of care and talk-therapy damages were too vague and difficult to prove to juries. Given this widespread opinion, large law firms like the one that employed me were not at all interested in fronting the large sums of money required for "experimental" lawsuits. In contrast, I became increasingly convinced that JD lawyers (lawyers with *no* special scientific training) — even the very best ones in the country — simply did not comprehend the relevant science and had never worked in effective multidisciplinary science-law teams.

News of a \$500,000 plaintiff's verdict in the Ramona [1] malpractice case in California generated some interest in the possibility of additional suits but did not solve the essential concerns. Upon close inspection the very wealthy plaintiff, Mr. Ramona, had apparently self-funded the litigation and despite winning a jury verdict had reportedly actually lost money on the case. Even worse, the case was an unusual "third party" claim and thus likely to have been overturned on appeal. In sum, a financially viable recovered-memory therapy malpractice lawsuit was still considered "impossible".

Fortunately, the Ramona story did result in my being interviewed in several national media outlets — the *Wall Street Journal*, *Los Angeles Times*, *American Bar Journal* and others — on the "meaning" of the unusual Ramona verdict. This national media attention softened the resistance of our law firm's most prominent litigator, Edward M. Glennon, who joined my requests for funding. Ed's support enabled us to obtain the financing to conduct two "impossible" jury trials with team member Christopher Yetka. The Hamanne (95)^[2] and Carlson

(96)^[3] jury verdicts, both apparently records at that time for length of trial and size of verdict (both over \$2 million), received world-wide media attention. Such suits were finally viewed as financially viable. From that time forward I was able to place cases across the country with solid law firms, set up science-law teams and begin to litigate throughout the U.S. I went on to manage and litigate several hundred multidisciplinary "science intensive" litigation cases by setting up science-law multidisciplinary teams in over 30 states. We were successful in about 98% of those cases.

When our team's \$10 million settlement in the Burgus v. Braun^[4] case was reported on page 1, column 1 of the *NY Times* in 1997, the war was essentially over. When I spoke at a national convention of physicians, medical school professors, and hospital directors a few months after the Burgus news, the hospital executives told me they were shutting down all MPD and related hospital units because following the Burgus case they now viewed each of their "recovered memory patients" as "walking multi-million dollar liabilities". Thousands of patients were thus freed from the harmful influences of recovered-memory therapy programs. Over the next few years the recovered-memory therapy industry collapsed rather rapidly leaving only mopping up operations through criminal, civil, and licensing systems across the country.

The abuse scandals of the Catholic Church briefly revived some "recovered memory" issues as plaintiffs sought ways to file otherwise long-lapsed cases. Unfortunately, some attorneys defending the church struggled to properly distinguish reliable abuse claims from "recovered memory" cases and some apparently attempted to litigate the RM cases using JD-only, pre-Hamanne, "horse and buggy" legal methods — too often with negative results. By failing to engage the

national “A team” and eliminating RM suits as junk science cases, local attorneys encouraged the filing of more RM suits. By settling these suits instead of distinguishing them from credible cases, local attorneys poured enormous financial resources back into the collapsed RM industry.

Editor: What are Frye-Daubert-Kumho legal hearings?

Barden: Frye-Daubert-Kumho legal hearings are used to examine the reliability and usefulness of expert witness testimony. In these hearings, if the theory or testimony cannot be shown to be reliable and helpful to the court it must be excluded to protect the integrity of the legal process. See, Grove, W. M. and Barden, R.C. (2000) Protecting the Integrity of the Legal System: The Admissibility of Testimony from Mental Health Experts Under Daubert/Kumho Analyses, *Psychology, Public Policy and Law*, Vol 5, No. 1, 234-242. Excerpts reprinted in Fisher, George (Prof. Stanford Law School), *Evidence: University Casebook Series*, Foundation Press - West Group, New York, 2002, pg. 688.

Editor: What role did Frye-Daubert-Kumho hearings play in the success of your recovered memory therapy malpractice suits?

Barden: Frye-Daubert-Kumho legal hearings to exclude junk science testimony on “repressed and recovered memories” were (and remain) a large part of our success in such cases. By blocking the introduction of “recovered memory” testimony we protected the integrity of the process, destroyed the opposition’s main arguments, and obtained ruling after ruling dismissing these junk science cases.

Editor: Why are some Frye-Daubert-Kumho hearings on “repressed and recovered memories” still being lost when you seem to win virtually all of your hearings?

Barden: As a former faculty member in law and medicine, let me begin with a

general statement on the nature of the legal and medical professions. One hundred years ago the typical medical professional would travel door to door in a horse and buggy dispensing not-very-effective and often quite dangerous health care. Early in the 20th century, following Professor Flexner’s report on the effectiveness of medical training, medicine began to reform, conform to scientific findings, improve in effectiveness, and move towards multidisciplinary teams of professionals. Think of the modern surgical unit with surgeons, radiologists, anesthesiologists, nurses, pharmacists, and other professionals working together to produce care far beyond “horse and buggy medicine.” Unfortunately, even in the 21st century, the legal system remains mired in “horse and buggy” methodology. In many trials, even trials involving highly complex and controversial science, JD-only attorneys are the persons controlling the process. This reliance on antiquated legal methodology, has been a disaster in many areas of the law but especially in family law and “recovered memory” civil and criminal cases.

Not knowing all of the details of the lost Frye-Daubert-Kumho cases, I am limited to offering general reasons as to what apparently went wrong in some of these unfortunate cases. The first thing to emphasize in our analysis is the overwhelming success of the multidisciplinary team method I call “science-intensive litigation”. From general consulting efforts in Hungerford (97)^[5], Engstrom (97)^[6], Bourgelais (05)^[7] and other cases to our complete courtroom hearings in Hamanne (95), Carlson (96), Quattrochi (99)^[8], Rivers (05)^[9], Keenan (09) and others, we have enjoyed rather uniform success in excluding RM testimony and experts. This success depends upon the careful creation of multidisciplinary teams of highly qualified national expert professionals. For example, our recent suc-

cess in the Keenan (2009, MN) case involved Elizabeth Loftus (Ph.D., national research psychology expert in memory and memory contamination, methodology, acceptance in the field of memory, history of the RM movement, and related areas), Harrison Pope (MD research-clinical psychiatry expert in methodology, diagnosis, DSM, history of the RM movement, bio-medical issues, acceptance in the field of psychiatry, and others), William Grove (Ph.D. research-clinical psychologist and expert in testing, diagnosis, assessment, clinical judgment, DSM, acceptance in the field of clinical psychology, and related issues) and myself (Ph.D., J.D. research-clinical psychologist and trial counsel specializing in the litigation of science issues). An even wider range of national experts including Richard Ofshe, Ph.D., Paul McHugh, M.D. and others has also been essential in earlier cases. In my opinion, involving the “A team” of national science and legal experts is the single most important ingredient for success in such cases.

In stark contrast to the “A Team” method, too many lawyers mistakenly believe that they, as JD-only attorneys, can sufficiently comprehend and effectively use complex social science information in real time in high speed verbal battles with RM experts. In my experience, even the most talented and experienced nationally renowned JD-only attorneys are not even remotely capable of effectively cross-examining RM experts who are often highly trained, compelling professionals who have spent years polishing misleading presentations of RM “science”. In addition, JD-only attorneys, in my opinion, are quite incapable of conducting effective redirect examinations of our own national experts. The information involved is simply too scientifically complex, involves too many areas of overlapping confusions, is happening too rapidly even for in-trial consultants, and is difficult to summa-

rize for legal analysis by the court. Questions that leave confusing holes in our own expert's presentations are often easily clarified in real time during court proceedings but only if the attorney asking the questions is very, very, very familiar in detail with the relevant research literature. JD-only attorneys cannot possibly display this kind of detailed, professional knowledge of the fields of memory contamination, diagnosis, clinical judgment, psychological testing, social science methodology, history of psychology, misconduct of RM leaders, etc, etc. Relating this again to the health care system, even the very best, kindest, and most highly motivated dentists should not attempt heart transplants.

As a specific example of the "A team" method at work, I was conducting a cross examination of a highly skilled RM expert. At my counsel table was a box of dozens and dozens of peer-reviewed published research articles on trauma, repressed memory, cognition, developmental issues, suggestibility, clinical judgment, medication effects, the DSM, etc. When the RM "expert" would misstate the research, I would pull out the relevant article, turn to the appropriate section and ask the "expert" to read the correction into the record. The court quickly understood that this expert could not be trusted. The idea that even the very finest of JD-only attorneys could conduct such an examination is fanciful.

A second example involves an expert testifying with regard to psychological assessment issues. The expert was discussing MMPI reports and the resulting diagnostic recommendations. Unfortunately for the expert, the most relevant MMPI scales were not stable over time and the test in question was quite out of date. The expert had failed to report this serious methodological error to the court. The error and the failure to report the error were both violations of licensing rules. The court quickly understood that this

expert could not be trusted. The entire case turned on this cross examination. The idea that even the very finest of JD-only attorneys could conduct such an examination is fanciful.

A third example involves the issue of the history of misconduct by RM experts. This is always a difficult issue and given their academic backgrounds even our own experts do not like to discuss it. As someone who served as a Special Assistant State Attorney General for Utah in 2004 and 2005, I look forward to this part of the case. The failure to fully, fairly, and accurately display the sordid history of misconduct — including criminal misconduct — by leaders of the RM movement is, in my opinion, perhaps the most serious and common error of JD-only attorneys in such matters.

A fourth example involves experts offering different answers to the very same questions when those questions are asked by a JD-only attorney or by an attorney with two national research awards who has participated in licensing revocation actions against a number of professionals in the expert's field of study. Several of the most prominent RM experts refuse to participate in cases where they will be examined by an attorney who is also a national expert in their own field.

Some lawyers attempt a "half-baked" solution to these problems by having a medical or psychological expert in the courtroom to assist them or write questions during examinations. This approach is certainly far better than having JD-only attorneys go it alone but not nearly as effective as the full "A team" method. The very fine world-class experts we involve in these cases became international experts by becoming highly specialized. Thus none of them can cover the entire range of issues needed to win these hearings including clinical judgment limitations, lie detection, research methods, statistical issues, medication, DSM, medical, history of

misconduct by RM experts, recent research findings in a range of professions, local licensing rule restrictions, legal evidentiary issues, evidentiary presentation issues, and related quandaries. A JD-only attorney would need at least 3 experts in the courtroom with them at all times somehow rapidly coming up with and communicating complex questions in real time. For obvious reasons this has never been accomplished or even attempted.

In sum, I fear that lawyers who continue to use "horse and buggy" legal methods will continue to lose cases they really should win and these losses will fuel attempts to revive the RM industry.

Editor: Given the success of your science intensive litigation methods and the poor results in many other cases, why wouldn't all lawyers simply use these new methods?

Barden: It is very difficult to understand, isn't it? Some attorneys never conduct the minimal investigation necessary to find out about the history of successes in these cases. Given the international news coverage our trials generated such information is readily available. Other lawyers, tragically, are informed and simply refuse to involve the "A Team" believing they, as experienced JD-only attorneys, can handle all cases. Tragically, they often find out too late that "horse and buggy law" often works very poorly indeed in complex social science hearings. Finally, economic considerations can also play a role some well-intentioned but misinformed attorneys are "penny wise and pound foolish" — trying to reduce costs in litigation but ending up losing many, many times the amount saved in settlements or losing verdicts. At some point our "A team" may lose a Frye-Daubert-Kumho hearing and these decisions may become more complex but at this point the choices and consequences seem rather clear.

1. See FMSF Nsltr. Vol. 3 No. 6, 1994.

2. See FMSF Nsltr Vol. 4 No. 8, 1995.
3. See FMSF Nsltr Vol. 5 No. 3, 1996.
4. See FMSF Nsltr Vol. 6 No. 11, 1997.
5. See FMSF Nsltr Vol. 5 No. 3, 1996.
6. See FMSF Nsltr Vol. 14 No. 3 2006.
8. See FMSF Nsltr Vol. 8 No. 4 1999.
9. See FMSF Nsltr Vol. 15 No. 1 2006.

*History of Completed Cases in Which
R.C. Barden Participated as a
Consultant or Trial Counsel*

See, e.g., Hamanne, et al. v. Humenansky, Ramsey County Minnesota File No. C4-94-203, Judge Bertrand Poritsky, June 30, 1995, Transcript page 83-84. "The Frye hearing has been concluded and we are still on the record... It's my finding, first, that the theory a person can block out of awareness [repress or dissociate] a long stream of [traumatic] events and subsequently recall them accurately is not supported by experts in the field. And further that there is no agreement by experts that there is general agreement that such [recovered memory] evidence is reliable and trustworthy. That's the Frye standard. As to the Daubert standard, it is also my ruling that such [recovered memory] evidence is not reliable nor helpful to the jury."

See, Carlson v. Humenansky (Minnesota Trial Ct), Judge Bertrand Poritsky (January, 1996). Judge Poritsky again found (as he had in Hamanne v. Humenansky) that repression and recovered memories were unreliable concepts, not accepted by the relevant scientific community, not helpful to a jury and thus inadmissible.

See, Engstrom v. Engstrom California App., 2nd App. Dist., Div 2, (CA 1997) "[Repressed memory] is not generally accepted as valid and reliable by a respectable majority of the pertinent scientific community..."

See, State of New Hampshire v. Hungerford and State of New Hampshire v. Morahan 698 A.2d 1244 (N.H. 1997) "The phenomenon of recovery of repressed memories has not yet reached the point where we may perceive these particular recovered memories as reliable."

See, State of New Hampshire v. Walters 697 A.2d 916 (N.H. 1997) "[W]e conclude, as we did in Hungerford, that "[t]he indicia of reliability present in the particular memories in [this] case[] do not rise to such a level that they overcome the divisive state of the scientific debate on the issue."

See, State of Rhode Island v. Quattrocchi, C.A. No. P92-3759 (R.I. 1999) [on remand from the Rhode Island Supreme Court 681

A.2d 879 (R.I. 1999)] "The State has not met its burden of establishing that repressed recollection is reliable and admissible as scientific evidence."

See, State of New Hampshire vs. Bourgelais, Docket No. 02-S-2834, Judge T. Nadeau, April 4, 2005. "the State's motion [to use repressed memory evidence at trial] is denied... the court determines, based on the law and the evidence, that the reliability of memory retrieval has not been sufficiently established..."

See, Rivers v. Father Flanagan's Boys Town, Doc 1024, Case No. 743, Nebraska State Court Judge Sandra L. Dougherty, November 25, 2005. "In conclusion, the Court finds and concludes that Rivers has not met his burden of establishing that repressed and recovered memory is reliable and admissible as scientific evidence or that it is properly applied in this case. The Plaintiff's evidence lacks the scientific reliability and proper application necessary to admission under Rule 702 and Daubert/Schaferman. As a result, the Courts finds and concludes that the Defendants' Motion in Limine No. 1 (banning all testimony regarding repressed and recovered memories) shall be sustained."

See, Duffy v. Father Flanagan's Boys Town, Case No. 8:03CV31, United States District Court for the District of Nebraska, Memorandum and Order of January 26, 2006 by Hon. Laurie Smith Camp, U.S. District Judge. "[Plaintiff] Duffy filed a motion of withdrawal of expert testimony on the issue of repressed memory.... [thus] judgment will be granted to [Defendant] as a matter of law."

See, Keenan v. Archdiocese of St. Paul and Minneapolis and Diocese of Winona, Case No. 62-C9-06-003962, December 8, 2009, 2nd Judicial District, Judge E. Johnson after an exhaustive multi-week hearing found, "Plaintiff failed to meet his burden of proof under the Frye-Mack standard of showing that the concept of repressed and recovered memory is generally accepted in the relevant scientific community" ... "Inclusion of the diagnosis of dissociative amnesia in the *DSM-IV* does not establish general acceptance of that diagnosis" ... "Plaintiff failed to meet his burden of proof under the Frye-Mack standard of showing that the theory of repressed and recovered memory is reliable and trustworthy based on well-recognized scientific principles because of the significant methodological flaws in the studies presented by plaintiff in support of that theory and the lack of any test to show reliability. Defendant's Motion to Exclude Expert Testimony under the Frye-Mack standard is hereby GRANTED."



SOME BOOKS OF INTEREST

The Trauma Myth: The Truth About the Sexual Abuse of Children and Its Aftermath

Susan A. Clancy

Remembering Trauma

Richard McNally

Science and Pseudoscience in Clinical Psychology

S. O. Lilienfeld, S.J. Lynn, J.M. Lohr

Psychology Astray:

Fallacies in Studies of "Repressed Memory" and Childhood Trauma

Harrison G. Pope, Jr., M.D.

**Remembering Our Childhood:
How Memory Betrays Us**

Karl Sabbagh

**Making Minds and Madness:
From Hysteria to Depression**

Chapter 3

"A Black Box Named *Sybil*"
Mikkel Borch-Jacobsen

**Try to Remember: Psychiatry's Clash Over Meaning, Memory,
and Mind**

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Web Sites of Interest

www.seweb.uci.edu/faculty/loftus/
Elizabeth Loftus

www.theisticsatanism.com/asp/
Against Satanic Panics

comp.uark.edu/~lampinen/lab.html
The Lampinen Lab False Memory Reading Group,
University of Arkansas

<http://www.exploratorium.edu/memory/>
The Exploratorium Memory Exhibit

theretractor.angelfire.com/
Site for retractors run by Laura Pasley

www.process.org/
Site of Investigative Journalist

www.psyfmfrance.fr
French False Memory Group

www.psychoheresy-aware.org/ministry.html
The Bobgans question Christian counseling

<http://www.IllinoisFMS.org>
Illinois-Wisconsin FMS Society

www.ltech.net/OHIOarmhp
Ohio Group

recoveredmemorytherapy.blogspot.com
Matt Stone's updates on Australia FMS

<http://www.bfms.org.uk>
British False Memory Society

www.religioustolerance.org/sra.htm
Information about Satanic Ritual Abuse

www.angryparents.net
Parents Against Cruel Therapy

www.peterellis.org.nz
Site run by Brian Robinson contains information
about Christchurch Creche and other cases.

www.falseallegation.org
National Child Abuse
Defense & Resource Center

www.markpendergrast.com
Excerpts from *Victims of Memory*

www.rickross.com/groups/fsm.html
Ross Institute

www.enigma.se/info/FFI.htm
FMS in Scandinavia - Janet Hagbom

www.ncrj.org/
National Center for Reason & Justice

www.traumaversterking.nl
English language web site of Dutch retrector.

www.quackwatch.org
This site is run by Stephen Barrett, M.D.

www.stopbadtherapy.com
Contains information about filing complaints.



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